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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0096; Docket No. 2013-0077;

Sequence No. 10]

Federal Acquisition Regulation;

Submission for OMB Review; Patents

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning patents.

DATES: Submit comments on or before **[Insert date 30 days after publication in the Federal Register.]**

ADDRESSES: Submit comments identified by **Information Collection 9000-0096, Patents**, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching for "9000-0096; Patents". Select the link

"Submit a Comment" that corresponds with "Information Collection 9000-0096, Patents". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0096, Patents" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), IC 9000-0096, 1800 F Street, NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite Information Collection 9000-0096, Patents, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrusek, Procurement Analyst, at 202-501-0136. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The patent coverage in Federal Acquisition Regulation (FAR) subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection with performing a Government contract (FAR 27.202-1 and 52.227-2).

The contractor is also required to report all royalties anticipated or paid in excess of \$250 for the use of patented inventions by furnishing the name and address of licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and number of units (FAR 27.202-5, 52.227-6, and 52.227-9).

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

A notice was published in the Federal Register at 78 FR 30304, on May 22, 2013.

B. Analysis of Public Comments

Two respondents submitted comments on the extension of the previously approved information collection. The analysis of the public comment is summarized as follows:

A. Approval to extend this information collection requirement.

Comment: One respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because the analysis significantly underestimates the paperwork burden imposed by this requirement and has therefore not provided sufficient justification for the requested extension. The respondent further stated that the agency and OMB should assess the need to extend this information collection requirement in the context of assessing the total information collection burden. The respondent further commented that the "collective burden of compliance" required of the Government acquisition community annually totals over 30 million hours. According to the respondent, the collective burden greatly exceeds the agency's estimates and outweighs any potential utility of the extension.

Comment: A second respondent noted that this extension should not be granted unless it is a no cost extension to

the government. The burden is small and understood prior to contract award.

Response: The criteria for extension of an information collection requirement must be based primarily on the need and use for the required information. It is essential for contractors to report responsibility requirements, regardless of the number of responses. If the agencies have determined that the information is essential to protect the interests of the Government, then the extension should be approved.

B. Accuracy of the data estimates

Comment: One respondent commented that the agency did not accurately estimate the public burden, challenging that the agency's methodology for calculating the burden is insufficient and inadequate and does not reflect the total burden. The respondent stated that-

- Thirty respondents responding just once annually is grossly understated. Under FAR 52.227-6, Royalty Information, any response to a solicitation containing costs or charges for royalties totaling more than \$250 triggers this information collection.
- The Agencies estimate the hours per response of thirty minutes (.5 hours) is inadequate. Each information collection requirement effectively imposes three separate requirements on the public: (1) the need to monitor whether reporting is

required; (2) the need to compile and collect the required information; and (3) the need to disclose that information to the Government.

Response: Based on data extrapolated from the Federal Business Operations website, and in consultation with subject matter experts, the Councils have increased the number of respondents and the burden hour estimates from 30 to 104 respondents and from .5 hours to 1 hour, and separated out the data. This re-evaluation resulted in slightly upward adjustment from the data previously published in the Federal Register at 78 FR 30304, on May 22, 2013.

C. Collective Burden of Compliance.

Comment: One respondent objects to the overall collective burden imposed by the Government on all respondents.

Response: The Councils cannot effectively address the broad allegations with regard to the accuracy and utility of the entire collective burden imposed on all Federal acquisitions. The Councils can only effectively address each individual collection requirement that is under consideration for OMB approval. The Councils constantly review information collection requirements imposed by the FAR regulations for ways to reduce the burdens and still achieve the objectives of the regulations, whether based on policy or statute.

D. Agencies' estimated burden should be increased

Comment: One respondent provided that the Agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007-006.

Response: The Council takes serious consideration, during the open comment period, to all comments received and will adjust the paperwork burden estimate based on reasonable considerations provided by the respondents. This is evidenced, as the respondent notes, in FAR Case 2007-006 where an adjustment was made from the total preparation hours from 3 to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government. In this particular instance, the burden was prepared using the burden hours method taking into consideration the time, effort and financial resources put on the entity submitting the information. This includes reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated hours must also be viewed as an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, it must be noted that the burden includes estimated hours only for those actions which a

company would not undertake in the normal course of business. In this instances, the total burden hours were revised slightly upwards.

C. Annual Reporting Burden

This information collection reflects a slight adjustment from what was published in the Federal Register at 78 FR 30304, on May 22, 2013, for the number of respondents required to comply with FAR 52.227-2, 52.227-6 and 52.227-9. This change is primarily due to a re-evaluation based on consultations with subject matter experts and updated data retrieved from the Federal Business Opportunities website.

For FAR 52.227-2, data extrapolated from the Federal Business Opportunities website indicates that there were a total of 18 solicitations. The Government estimates that there are an additional 18 solicitations which were not accounted for in Federal Business Opportunities. It is further estimated that each solicitation would result in approximately two contract awards, or 72 (36 * 2) unique vendors. Of the 72 unique vendors, it is estimated that approximately 30 percent or 20 unique vendors would have claims of patent (or copyright) infringement made against them as a result of their contract work requiring government notification. It is estimated that there is an average of one response per contract, resulting in approximately 20 responses per year. Two burden hours are estimated per

response to monitor claims of patent or copyright infringement and prepare, review, and submit the required notification. It is estimated that this work would be completed by a mid-level program manager and an attorney.

For FAR 52.227-6, data extrapolated from the Federal Business Opportunities website indicates that there were a total of eight solicitations. The Government estimates that there are an additional 12 solicitations which were not accounted for in Federal Business Opportunities, totaling 20. It is further estimated that each solicitation would result in approximately two contract awards, or 40 (20 * 2) unique vendors, required to submit royalty information with their proposal. Of the 40 unique vendors, it is estimated that approximately 10 percent or four unique vendors would be required to submit additional information prior to contract award. It is estimated that there is an average of one response per solicitation, resulting in approximately 44 responses per year. One burden hours is estimated per response to disclose the requested information in the proposal including such items as the amount of royalty paid, the patent numbers and a brief description of the component on which the royalty is paid, and to submit the required notification. It is estimated that one hour is needed to provide a copy of the current license agreement and redact any proprietary data, and to submit it to the government. It is estimated that this work would be completed by a mid-level program manager.

For FAR 52.227-9, data extrapolated from Federal Business Opportunities website indicates that there was a total of one solicitation. The Government estimates that there are an additional nine solicitations which were not accounted for in Federal Business Opportunities, totaling 10. It is further estimated that each solicitation would result in approximately one contract award, or 10 unique vendors. It is also estimated that each contract will have three subcontractors, for a total of 30 unique subcontractor vendors. Of the 40 (10 + 30) unique vendors, it is estimated that approximately 100 percent or 40 unique vendors would be required to submit a statement of royalties paid. It is estimated that there is an average of one response per solicitation, resulting in approximately 40 responses per year. 0.5 burden hours are estimated per response to submit a statement of royalties paid or required to be paid by the contract.

a. FAR 52.227-2:

Number of Respondents: 20.

Responses Per Respondent: 1.

Total Responses: 20.

Average Burden Hours Per Response: 2.

Total Burden Hours: 40.

b. FAR 52.227-6:

Number of Respondents: 44.

Responses Per Respondent: 1.

Total Responses: 44.

Average Burden Hours Per Response: 1.

Total Burden Hours: 44.

c. FAR 52.227-9:

Number of Respondents: 40.

Responses Per Respondent: 1.

Total Responses: 40.

Average Burden Hours Per Response: .5.

Total Burden Hours: 20.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW, Washington, DC 20405, telephone 202-501-4755. Please cite OMB Control No. 9000-0096, Patents, in all correspondence.

Dated: October 31, 2013

Karlos Morgan, Sr.
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Federal Acquisition Policy Division,
Office of Government-wide Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

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